



Report to: Development Services Public Meeting

Meeting Date: December 5, 2023

SUBJECT: Development Fee, Building, and City-Wide Fee By-laws
PREPARED BY: John Yeh, MCIP, RPP, Manager, Strategy and Innovation,
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RECOMMENDATION:

1. That the Report titled “Development Fee, Building, and City-Wide Fee By-laws” dated December 5, 2023 be received;
2. That the amendment to By-law 211-83, as amended, “Tariff of Fees for the Processing of Planning Applications,” substantially in the form attached as Appendix ‘B’, be enacted;
3. That the amendment to By-law 2002-276, as amended "A by-law to impose fees or charges for services or activities provided or done by the City of Markham" substantially in the form attached as Appendix ‘C’, be enacted’
4. That the amendment to By-law 211-83, as amended, “Tariff of Fees for the Processing of Planning Applications,” substantially in the form attached as Appendix ‘D’, be enacted;
5. That the proposed amendments to the Building By-law be referred to the Development Services Committee Public Meeting to be held on December 5, 2023; and further,
6. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

This report provides an overview of the results of the Development Application Fees Review Study and to request amendments to the Development Fee and City-wide Fee By-laws to implement the recommendations from the Study. This report also explains the proposed increase to the fees of the Building By-law and to seek authorization to refer the proposed amendments to the Building By-law to a Development Services Committee Public Meeting to be held on December 5, 2023.

BACKGROUND:

The Development Fee By-law and the Building By-law are reviewed and adjusted annually to recover the anticipated reasonable costs associated with the administration of *Planning Act* applications, the associated technical review and on-site inspection, and

building permits and building code inspection and enforcement under the *Building Code Act*. The annual adjustments fall into one or more of the following categories:

- overall adjustments driven by indirect and direct costs
- adjustments to provide opportunities to balance reserve accounts;
- refinements to existing fees to better reflect actual and anticipated costs of providing the related services; and
- new fees to capture new or previously underfunded services

A fee model was established in 2005 in order to calculate the annual adjustments necessary to ensure the City's Building, Engineering and Planning and Urban Design Departments remain adequately funded by building permit fees and development fees. The fee model is designed to cover direct and indirect costs as well as contribute to a reserve for Building and a combined reserve for Planning and Urban Design and Engineering (Development Fee Reserve) are included, as well as annual capital costs.

The City's Development Fee Reserve has substantially increased the past three years due to several reasons. Prior to 2020, Markham was regularly in a deficit position with the Development Fee Reserve. In 2016, Markham's Development Fee Reserve was negative \$10.7 million and by 2019 it was only \$515,000 in the positive. During this three year period from 2017 to 2019 development fees were increased between 10% and 19% to account for this deficit. The increase in development fees was also accompanied by a significant increase in construction cost during the COVID-19 pandemic and up to now. As some of the development fees are calculated as a percentage of construction cost the development fees collected during this period also increased significantly in line with the construction cost increases.

Finally, the City has experienced an increase in development activity with increasingly denser and more complex development proposals that resulted in an increase of development fee revenue. The effect of development fee increases led to a higher contribution to the Development Fee Reserve of about \$50.5 million at the end of 2022. This is much higher than the target Development Fee Reserve Balance of about \$28 million which is 1.5x the operating cost for Planning & Urban Design and Engineering combined.

The City has undertaken a number of initiatives before and during the Development Application Fees Review Study. Some of these improvements and efficiencies occurred as a result of the recommendations from KPMG's development review process and more recently a detailed Lean review which was reported to the October 31, 2023 Development Services Committee meeting. Staff also embarked on advancing a number of technological improvements to:

- Upgrade ePLAN development and building permit applications review software;
- Update the applicant web portal;
- Prepare a new mobile inspection app for the permit process;
- Build a new 3D electronic model to provide input development application recommendations; and

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- Develop MappiT a development application viewer for the public to view development application details.

Along with the above process and technological improvements staff were required to develop new a process for site plan, zoning by-law amendment (ZBA), and combined official plan amendment (OPA) and zoning by-law amendment applications that addressed requirements and objectives from Bill 109, *More Homes for Everyone Act*, 2022. As Committee is aware, Bill 109 includes fee refund provisions if a decision or approval on certain planning applications do not occur within prescribed timelines.

Building on these development process improvements Council in April 2023 approved partial payment of 50% of site plan and subdivision development application fees from May to end of December 2023 as an interim solution until the Development Application Fees Review Study is completed.

A review of the City's development application fees began in March 2023 by retaining Hemson Consulting Ltd. (Hemson) to assist in establishing a full cost recovery fee model for the City in providing development application review services. The review addresses the changes in staffing and application review processes from the following Provincial legislation:

- Bill 108, *More Homes More Choice Act* (2019)
- Bill 109, *More Homes for Everyone Act* (2022)
- Bill 23, *More Homes Built Faster Act* (2022)

The review also considers anticipated changes to the complexity of applications from the increasing range and mix of housing types and built form (e.g. intensification and redevelopment), new "greenfield" areas in the northern part of Markham, increasing complexity of engineering reviews, and the cost of application review work to develop the land use component of secondary plans for development areas.

At the October 31, 2023 Development Services Committee meeting, Hemson provided an update on the study's objectives, main conclusions, proposed fees, proposed fee structure, and a fee comparison with other municipalities.

The expedite the review and implementation of the development review fees and considering that the building permit fees have aligned with full cost recovery, a review of building permit application fees was not conducted at this time.

OPTIONS/ DISCUSSION:

This report provides an overview of the development application fee study results (Appendix 'A') and proposed recommendations to revise the fees in the Development Fee By-law (211-83) (Appendix 'B' and 'D') and City-wide Municipal Fee By-law (2002-76) (Appendix 'C'). Following the section on the development application fee recommendations, the proposed Building fee increase of 5% to the Building By-law will be discussed - amendments in Appendix 'E').

1. Development Application Fees Study (Planning & Urban Design and Engineering Departments)

The scope of the fees study had the following key objectives:

- Conduct a review of the City's direct and indirect costing models and fee structure
- Review the legislative framework that permits collection of development application fees under the *Planning Act* and *Municipal Act*
- Undertake a jurisdictional scan of development application fees of other municipalities
- Analyze the full cost of providing development application review service
- Calculate full cost recovery of fees
- Consult with stakeholders
- Prepare final study report and update various fee by-laws
- Prepare a new Development Fee By-law that's simplified for ease of navigation, application, and administration

Leading the review of development applications in Markham is the responsibility of the Planning & Urban Design Department within the Development Services Commission with input to reviews provided by various internal departments. Some applications such as plans of subdivision and site plans may require a substantial level of effort. The City also provides pre-application consultation services to potential applicants for development applications. This involves Planning & Urban Design and Engineering staff, as well as staff in other departments. The development application review process engages many staff with a range of expertise in development planning, policy planning, urban design, landscape architecture, transportation and traffic engineering, development engineering, parks planning, waste management, fire protection, and legal issues.

A high degree of inter-departmental co-ordination and tracking is therefore required throughout the process. The City's development application approval process has undergone numerous changes in recent years. Generally, applications have become more varied and complex, in part the result of a greater diversity of applications for residential development, particularly high-density housing proposals, in existing built-up areas.

The approach taken by Hemson for the development application fee review was to determine projected revenue using the existing development fee by-law, the total costing to provide development application review services and then determine the gap in how much more or less revenue was collected by each application types. Full cost fees were determined by estimating anticipated revenue for each application type based on historical information and input from staff. In most cases, the 2022 or four year historical average revenue per application was used, along with the anticipated growth increase of 15% applied and an inflation factor of 6% to bring revenues to a 2024 base to cover the total costing.

The development industry has been consulted on the fees study through a select working group of developers and the Building Industry and Land Development Association (BILD) and the broader Markham City Builders Forum at the following milestones:

- February 3, 2023 BILD – overview of the scope and timing of the fees study
- April 6, 2023 BILD – overview of proposed work plan, high level study methodology, addressing 2023 applications and agreements
- April 25, 2023 BILD – introduce Hemson staff, detailed project schedule and methodology
- May 11, 2023 City Builders Forum – overview of project schedule and methodology, addressing 2023 applications and agreements
- July 25, 2023 BILD – follow up from July 7, 2023 proposed fee structure and benchmarking memo
- September 28, 23 BILD – summarize full cost recovery analysis, proposed fees, reserve fund recommendations
- November 9, 2023 City Builders Forum – summarize October 31, 2023 Development services Committee presentation on full cost recovery analysis, proposed fees, proposed fee structure, reserve fund recommendations, benchmarking exercise

Total annual cost of development application review services is \$12.854 million of direct and \$3.161 million of indirect costs.

To determine the total direct costs a portion of staff time in various departments that review development applications were translated to salary costs, operating costs of the Civic Centre areas involved in development application review were determined, and non-personnel operating costs were determined. Table 10 from Appendix 'A' shows the breakdown of these direct costs by development application types which total \$12.854 million.

The indirect cost of processing development applications in the City are a share of corporate departments that can reasonably be attributed as overhead support of the planning application review service. Table 11 from Appendix 'A', Development Application Fee Review Report shows the breakdown of these costs by development application types which total \$3.161 million.

Therefore, the total annual direct and indirect costs amount to about \$16.015 million.

The gap between total costs (anticipated annual average) and revenue (anticipated annual average) indicates an estimated \$25 million in extra revenue

Table 13 from Appendix 'A' shows by application type the total estimated costs of providing development application service of \$16.015 million versus estimated 2024 revenues under the existing fees of \$41.302 million. This results in a gap of about \$25.287 million in additional revenue versus costs.

Majority of development application fees have been reduced based on the gap in costs and revenue noted

Table 14 from Appendix 'A' indicates the proposed fee rates have been significantly reduced for subdivision and site plan applications. The following is a summary of overall decreases and some increases to the fees by major application type submission after considering the proposed new fee structure and updated calculations:

- Decrease in fees related to –
 - Official Plan Amendment
 - Zoning By-law Amendment
 - Plan of Subdivision
 - Site Plan
 - Consent
 - Minor Variance
- Increase in fees related to –
 - Pre-Application Consultation
 - Plan of Condominium
- New fees –
 - Community Infrastructure Housing Accelerator (enables the Minister of Municipal Affairs and Housing to issue a zoning order to permit land uses and built form of a site at the request of a municipality)

The fees have been set where there is no contribution to the Development Fee Reserve fund. The 2022 reserve balance of approximately \$50.5 million is anticipated to be sufficient until the next fee update study is undertaken. \$50.5 million represents just over three years of operational expenses.

It is recommended that the fees be updated annually, through an indexing provision in the development fee by-law to include inflation increases (Appendix 'D'). The City will continue to monitor fee revenues and service costs and determine when to conduct another development application fee review.

Proposed Development Fee By-law structural changes

Highlights of the proposed changes (Appendix 'B'):

- Maintain the combined base and variable fee for subdivision and site plan application but reduce the number of variables to calculate fees to:
 - A per unit fee for plans of subdivision to a cap of \$500,000 or 200 units, whichever is greater
 - A per unit fee for residential site plans to a cap of \$500,000 or 775 units, whichever is greater
 - A gross floor area fee of \$1.83 m² for industrial, commercial and institutional (ICI) site plans
- Maintain engineering review fees for subdivision based on:
 - A separate fee based on a percentage of construction costs of municipal infrastructure works associated with the plan of subdivision. The

construction costs should include erosion and sediment controls, underground and above-ground works, streetlights, etc. plus a 10% contingency, as per the current by-law. A sliding scale approach was introduced to reflect the declining marginal costs, based on:

- 10% of construction costs for the first \$1 million in construction costs;
 - 8% of construction costs for costs between \$1 million and \$3 million;
 - 6% of construction costs for costs between \$3 million and \$5 million; and
 - 4% of construction costs greater than \$5 million
- Move to flat fees for engineering review of site plan control as the fees would cover review of site plan matters only. A separate Municipal Services Agreement would be required under the Municipal Services By-law, authorized under the *Municipal Act* (Appendix 'C'). A fee would be collected under this Municipal Services Agreement based on the same percentage of the cost of external municipal infrastructure works as above that is associated with a site plan application.
 - Move from fee payments in stages for subdivision application to a one-time payment at submission of a complete application
 - Merge Planning and Urban Design fees for subdivision and site plan applications
 - Maintain the structure of fees for pre-consultation, official plan amendments, and zoning by-law amendments
 - Generally maintain the current fee structure for minor variances, consents, supplementary fees and miscellaneous fees. Clarify the basis of fees for an exemption from part lot control

Projected Development Fee Reserve balance

Development Fee Reserve Forecast (\$ millions)		
Planning and Urban Design	2023 YE Projection	2024
Revenues	13.31	12.83
Less: Expenditures	<u>-11.30</u>	<u>-15.50</u>
Transfer to/(draw from) Reserve (A)	2.01	(2.67)
Engineering	2023 YE Projection	2024
Revenues	15.94	10.50
Less: Expenditures	<u>-10.63</u>	<u>-11.45</u>
Transfer to/(draw from) Reserve (B)	5.31	(0.95)
Development Fee Reserve		
Development Reserve Beginning Balance	50.47	58.54
Planning transfer to/(draw from) (A)	2.01	(2.67)
Engineering transfer to/(draw from) (B)	5.31	(0.95)
Capital investment and Interest	<u>0.75</u>	<u>0.25</u>
Development Fee Reserve Ending Balance	58.54	55.17

The reserve beginning balance in 2023 was \$50.47M. Based on the 2023 Budget, it was anticipated that there would be a draw from reserves of (\$1.66M) in Planning & Urban Design and (\$1.54M) in Engineering. The current year-end 2023 forecasts a transfer to reserves for both departments, resulting in a further surplus to the reserves at the end of 2023 of \$58.54M. The 2024 projection, which includes projected development activity and the proposed fee updates includes a draw from the reserve of (\$2.67M) for Planning & Urban Design, (\$0.95M) for Engineering, and \$0.25M capital investment and interest resulting in a decrease in the reserve from \$58.54M to \$55.17M.

2. Building Permit Fees

Building fee increases have traditionally been maintained at 5% although the increase for 2023 was limited to 2%. The 2023 increase was lower than previous years to account for a potential economic downturn leading to a recession while maintaining a Cost-of-Living Adjustment (COLA). The 2024 proposed increase of 5% aligns to past increases prior to 2023 while recognizing there are economic uncertainties including inflation and uncertainties in the development industry and to balance the needs of the City to maintain a reserve balance in the event of an economic downturn to ensure service levels are maintained. Staff consulted with developers and BILD from the Markham City Builders at the November 9, 2023 meeting on the proposed fee increases.

The *Building Code Act* requires the City to hold at least one public meeting with respect to changes in Building permit fees. Notice must be given to the general public and interested parties 21 days prior to the meeting. Staff are recommending that the changes to the Building By-law be referred to a Development Services Public Meeting to be held

on December 5, 2023. To meet the timeline requirement, the required notice has been placed on the City's website along with email notice to the development community.

The following table on the forecasted 2023 and 2024 Building reserve fund has been updated based on the following:

- 2023 year-end and 2024 projections
- Revenues based on projected permit applications
- Expenses

Building Fee Reserve Forecast (\$ millions)		
Building	2023 YE Projection	2024
Revenues	11.23	11.55
Less: Expenditures	<u>-11.08</u>	<u>-12.24</u>
Transfer to Reserve (C)	0.15	(0.69)
2024 Proposed Building Fee Increase		5.00%
Building Fee Reserve		
Building Fee Reserve Beginning Balance	13.50	13.57
Transfer to/(draw from) Reserve (C)	0.15	(0.69)
Capital investment and Interest	<u>(0.08)</u>	<u>0.11</u>
Building Fee Reserve Ending Balance	13.57	12.99

The Building Fee Reserve beginning balance in 2023 was \$13.50M. Based on the 2023 Budget, it was anticipated there would be a draw from the reserve of (\$0.79M). The current year-end forecasts a transfer to the reserve of \$0.15M and capital investment and interest of (\$0.08M). This will result in a reserve balance of \$13.57M at the end of 2023.

The 2024 projections, which includes a projected permit activity and a proposed fee increase of 5%, includes a draw from the reserve of (\$0.69M) and capital investment and interest of \$0.11M resulting in a decrease in the reserve surplus from \$13.57M to \$12.99M.

Proposed Building By-law Changes

Highlights of proposed Building By-law amendments from Appendix 'E':

Editorial amendments:

1. To amend Section 2.0- Definitions by inserting new definitions;
2. To amend section 7.0- Fees by adding in annual indexation rate for fees noted in Schedule A, Table1.

To amend the Schedule A Fee Schedule in the following manner:

1. To amend wording in 2.11 to include a fee for the review of Engineering Judgments;
2. To amend wording 2.20 clarifying temporary event structures;
3. Add section 2.26 to include hourly fee for afterhours inspection request;

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4. To amend wording in 4.2.3 clarifying refund structure;
 5. To amend wording in 5.14 to include a fee for building permit extensions where construction has not seriously commenced;
 6. To amend wording in 5.15 to include permit maintenance fee for incomplete permits;
 7. Add section 5.17 requiring a lot grading certificate be submitted;
 8. Add section 7.5 to increase fees annually by the Consumer Price Index, Ontario All Items to a maximum of 5% each year.

To amend Table 1, Schedule A

1. To increase fee multipliers by 5%.

FINANCIAL CONSIDERATIONS

Staff have worked to ensure proper direct and indirect cost recovery and to incorporate the results into the upcoming 2024 projections. The fee adjustments recommended in this report for the 2024 Development Fee By-law reflect the results of the completed Development Application Fee Review Report to ensure full cost recovery from development application fees. The Building By-law fee adjustment recommended for 2024 is 5%. These changes will assist in offsetting the projected direct and indirect costs, including any required transfers to/from the Building and Development Fee reserves, as per year-end practice. Finance and Development Services staff will monitor financial performance against budget and report back to Council throughout the year as part of the Year-to-Date Results of Operations reports.

Markham has experienced stronger development and building activity since 2016 when the Development Fee reserve balance started to move out of deficit and increase with a surplus in 2018 and 2020. The reserve balance for Building in the past several years has been relatively healthy. The Building Standards, Planning & Urban Design, and Engineering Departments has utilized the reserve to invest in new processes, update technologies, and updates such as ePLAN and address the increase in workload resulting from increased development activity, and to withstand cyclical downturns without abrupt changes to capacity and service levels. The following table provides a recent history of the balances in the Development (Planning & Urban Design and Engineering combined) and Building reserves:

Reserve Balances Surplus/ Deficit (\$ millions)		
Year End	Development	Building
2015	(10.67)	9.63
2016	(10.74)	10.22
2017	(7.77)	9.36
2018	0.277	12.94
2019	(0.52)	10.36
2020	9.12	6.38
2021	27.96	13.91
2022	50.47	13.50
2023 Forecast	58.54	13.57
2024 Forecast	55.17	12.99

HUMAN RESOURCES CONSIDERATIONS

Not applicable

ALIGNMENT WITH STRATEGIC PRIORITIES:

Growth Management and Municipal Services delivery

BUSINESS UNITS CONSULTED AND AFFECTED:

Planning & Urban Design, Engineering, Building Standards, Financial Services, Legal Services

RECOMMENDED BY:

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ATTACHMENTS:

Appendix 'A' – Development Application Fee Review Report by Hemson Consulting Ltd.

Appendix 'B' - Draft of amendment to delete and replace Schedule 'A' from By-law 2023-108 to amend Development Fee By-law 211-83 and to further amend Development Fee By-law 211-83

Appendix 'C' – A draft amendment to amend City-wide Fee By-law 2002-276

Appendix 'D' – A draft amendment to amend Development Fee By-law 211-83 to update fees annually through an indexing provision

Appendix 'E' – A draft amendment to repeal and replace Building By-law 2023-18